

Decision 20-03-018 March 26, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39G) for Commission Approval Under Public Utilities Code Section 851 to Sell the Gas Local Transmission Line 306 to Southern California Gas Company (U902G).

Application 19-04-003

**DECISION AUTHORIZING SALE OF GAS LOCAL TRANSMISSION
LINE 306 FROM PACIFIC GAS AND ELECTRIC COMPANY
TO SOUTHERN CALIFORNIA GAS COMPANY**

Summary

Pursuant to Section 851 of the California Public Utilities Code, this decision authorizes Pacific Gas and Electric Company to sell its local gas transmission Line 306 to Southern California Gas Company. This decision also grants in part and denies in part the proposed allocation for the gain on sale of the Line 306 assets. In addition, this decision grants the proposed ratemaking treatment for the gain on sale and the joint motion to file certain information under seal. We conclude that approval of the sale is not adverse to the public interest.

This proceeding is closed.

1. Background

1.1. Procedural Background

On April 4, 2019, as amended on June 26, 2019, Pacific Gas and Electric Company (PG&E) filed the instant application.¹ The Utility Reform Network (TURN) and the Public Advocates Office (Cal Advocates) filed timely protests, and PG&E replied to the protests.

A prehearing conference (PHC) was held on June 19, 2019, to discuss the issues of law and fact, need for hearing, and schedule for resolving the matters in the proceeding. During the PHC, the assigned Administrative Law Judge (ALJ) raised the possibility of directing Sothern California Gas Company (SoCalGas) to file testimony supporting its assertion regarding the need to replace Line 44-1088 and related cost data. In lieu of having SoCalGas file testimony, the parties offered to file PG&E's and SoCalGas' responses to Cal Advocates' data requests.

On July 15, 2019, the Cal Advocates, PG&E, and SoCalGas jointly filed (1) a motion to enter four data responses (Attachment A) into the record (Data Response Motion), (2) a motion to designate as confidential certain information in Attachment A (Confidential Data Motion), and (3) a notice informing the public of where to access the redacted version of Attachment A. Pursuant to the Scoping Memo and Ruling, on November 15, 2019, PG&E and SoCalGas filed a document describing the contents of the compact disks that contained the data responses, and PG&E also served testimony to address issues eight and nine of the Scoping Memo and Ruling.²

The proceeding was submitted on November 21, 2019.

¹ Pacific Gas and Electric Company, Application 19-04-003 (Application).

² PG&E's testimony is identified as Exhibit (Exh.) PG&E-1 and admitted as of the date of this decision.

1.2. Factual Background

Built in 1962, PG&E's Line 306 is an intrastate pipeline that spans approximately 70 miles from Kettleman to Morro Bay, California. PG&E constructed Line 306 primarily to serve its Morro Bay Power Plant, which was decommissioned in 2014. Currently, PG&E uses Line 306 to serve 2,400 residential customers and a prison in Avenal, and small commercial customers, including a vineyard and waste-water treatment plant. In addition, pursuant to a Master Exchange Gas Delivery Agreement (MEA) between SoCalGas and PG&E, Line 306 also serves customers in SoCalGas' service territory.³

On December 20, 2018, PG&E and SoCalGas executed a Purchase and Sale Agreement (Sale Agreement), which, among other things, provides that PG&E agrees to sell Line 306 to SoCalGas for \$25 million.⁴ SoCalGas seeks to use Line 306 to serve customers who currently use its Line 14-1008, a 55-mile gas pipeline, which, according to SoCalGas' Commission-approved Pipeline Safety Enhancement Plan, must be replaced.⁵ SoCalGas asserts that the direct cost to rebuild Line 44-1088 is approximately \$153 million.⁶

PG&E asserts that selling Line 306 to SoCalGas for \$25 million would be more beneficial for ratepayers than the two alternative options: (1) continue to own and operate Line 306 and (2) abandon Line 306. PG&E compared the options by determining the net present value (NPV)⁷ of cash inflows and

³ Application at 2 (citing Resolution G-2902).

⁴ Application, Attachment B "Purchase Price and Payment" at 8.

⁵ Application, Attachment E, March 26, 2019 Letter from Cedric Williams, Vice President for SoCalGas to the California Public Utilities Commission (SoCalGas Letter) at 1; *see also Southern California Gas Company*, Decision (D.) 14-06-007 at 24-25.

⁶ Application, SoCalGas Letter at 1.

⁷ NPV measures the after-tax value created by a project. Application, Attachment C at 1.

outflows for the period of 2019-2028. Selling Line 306 yields the highest NPV cash inflow of \$11.7 million. In contrast, continuing to own and operate Line 306, or abandon it, is estimated to cost ratepayers approximately \$18.7 million and \$25.9 million, respectively.

The sale will generate a net gain for both the depreciable and non-depreciable (*e.g.*, land) Line 306 assets. As of December 31, 2018, the net book value of the depreciable assets for Line 306 was approximately \$3.845 million; thus, the after-tax gain on the sale of those assets is approximately \$15 million.⁸ The after-tax gain on the sale of the non-depreciable Line 306 assets is approximately \$2000.

With respect to the allocation of the gain, PG&E asserts that, while D.06-05-041 requires 100 percent of the gain on sale of depreciable routine assets to be allocated to ratepayers when the after-tax gain is \$10 million or less, it believes that applying this rule here is reasonable even though the instant sale will result in an after-tax gain that is higher than \$10 million. For the non-depreciable property associated with Line 306, PG&E proposes to allocate 100 percent of the gain to shareholders because “[f]or non-depreciable property (land) under FERC jurisdiction, the gain on loss on sale must be allocated 100 [percent] to shareholders.”⁹

PG&E proposes to account for the ratepayer’s share of the gain on sale in PG&E’s transmission rates by reducing the authorized core and non-core local transmission revenue requirement on a pro rata basis over the 2019 rate case cycle (2019-2022). The reduction will be allocated between core and non-core

⁸ Application at 4.

⁹ *Id.* at 4.

customers using the currently-adopted local transmission allocation percentages. The remaining gain on sale that exists after the end of the 2019 rate case cycle will be recorded in PG&E's plant, depreciation reserve, and deferred tax accounts — all of which will be incorporated into PG&E's subsequent transmission revenue requirement.¹⁰ However, the transmission rate for Line 306 customers in PG&E's service territory will not change as it is determined by the billing terms of the MEA, which shall remain in effect after the sale has been executed.¹¹

With respect to pipeline records for Line 306, PG&E documented a Feature List, which itemizes certain pipeline attribute data, including construction drawings, as-built records, strength tests, and purchase documents. Pursuant to PG&E's internal Utility Procedure TD-4125P-02, it stored the Feature List for Line 306 in its electronic system of record and Geographical Information System. PG&E represents that it has provided SoCalGas with all of the record information it possesses for Line 306.¹² In addition, PG&E has provided SoCalGas with other information such as Cathodic Protection records, valve maintenance records, and land rights information including, rights-of way, easements, and fault crossings.¹³ PG&E provided the records through email, electronic data transfer protocol, compact disks, in-person meetings, and site visits.¹⁴

¹⁰ *Id.* at 6.

¹¹ *Id.* at 7. The MEA allows SoCalGas and PG&E to serve each other's customers using their respective transmission lines. The "[g]as exchanges under the MEA are trued-up and accounted for monthly." Application at 2.

¹² Exh. PG&E-1 at 1-2.

¹³ *Id.* at 2-2.

¹⁴ *Id.*

PG&E asserts that the California Environmental Quality Act (CEQA) requirements do not apply to the instant application because the transfer will not “cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment.”¹⁵ After the sale, SoCalGas will perform hydrotesting and replace valves and other equipment, which, PG&E asserts, are activities that are also exempt from CEQA.¹⁶

Finally, PG&E asserts that it reserves the right to amend or withdraw its filing by reason of its status as a debtor under chapter 11 of the Bankruptcy Code and by reason of events that may occur in its chapter 11 case.¹⁷

2. Jurisdiction

Pursuant to Section 851, “[a] public utility . . . shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its . . . property necessary or useful in the performance of its duties to the public, . . . without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000),¹⁸ Here, the sales transaction is valued at \$25 million and will transfer a used and useful public utility asset (*i.e.*, Line 306); accordingly, the sales transaction is subject to the Commission’s Section 851 jurisdiction.

¹⁵ Application at 7 (citing Cal. Pub. Res. Code § 21065).

¹⁶ *Id.*

¹⁷ *Id.* at 1, note 1.

¹⁸ All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

We have held that the relevant Section 851 inquiry is whether the proposed transaction is “adverse to the public interest.”¹⁹ The “public interest” includes the interest of not only ratepayers, but also members of the public as they may be affected by, and therefore interested in, a utility's facilities even if they are not served by that utility.²⁰ The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers.²¹ For example, the Commission considers whether “the sale of a utility would place the property in the hands of persons incapable of delivering adequate service at reasonable rates.”²²

3. Issues Before the Commission

As set forth in the Scoping Memo and Ruling (Scoping Memo), this decision decides the issues below. The Scoping Memo provides that a determination on whether SoCalGas should be permitted to recover the acquisition premium for line 306 is outside the scope of this proceeding; accordingly, this decision does not determine whether SoCalGas should be permitted to recover the purchase price for Line 306 from ratepayers.

1. Whether the proposed sale is adverse to the public interest pursuant to Public Utilities Code Section 851;

¹⁹ *Kotch Pipeline Company, LLP*, 1999 Cal. PUC LEXIS 498 * 7, (citing *Universal Marine Corporation* 14 CPUC2d 644, 646 (1984) and *Southern California Edison Company*, D.99-03-016, slip op. at 14.); *Global Crossing Ltd.*, D.99-06-099, Conclusion of Law 1.

²⁰ *San Diego Gas & Electric Company*, 2011 Cal. PUC LEXIS 302 *14.

²¹ *Pacific Gas and Electric Company et al*, D.06-01-021 at 11 (Citing *Southern California Edison Company*, D.00-07-010 at 6).

²² *Order Instituting Rulemaking Concerning the Ratemaking Treatment of Capital Gains Derived from the Sale of a Public Utility Distribution System Serving an Area Annexed by a Municipality of Public Entity*, 1989 Cal. PUC LEXIS 587 at *26 (citing *SoCal. Mt. Water Co.* 1 CRC 520 (1912)).

2. Whether PG&E should allocate the gain on sale of Line 306 pursuant to D.06-05-041;
3. Whether 100 percent of the gain on sale for non-depreciable assets related to the sale of Line 306 should be allocated to PG&E's shareholders;
4. Whether PG&E's proposal to allocate to ratepayers the gain on sale of Line 306 as a pro-rata reduction to its local transmission revenue requirement is reasonable;
5. Whether PG&E's proposal to allocate to core and non-core customers the pro-rata local transmission revenue requirement reduction from the gain on sale of Line 306 using its Core Fixed Cost Account and Gas Transmission and Storage Revenue Sharing Mechanism balancing accounts is reasonable;
6. Whether PG&E should be permitted to provide the final calculation of the gain on sale of Line 306 and related tax information in a Tier 1 Advice letter 45 days after the closing date of the transaction;
7. Whether Commission authorization for the proposed sale should be conditioned upon PG&E's implementation of the proposed ratemaking treatment, including allocation of the gain on sale of Line 306;
8. Whether PG&E has complete pipeline records, including pressure test records and Geographical Information System data, for Line 306;
9. Whether there is a reasonable method for accurately transferring pipeline investigation, testing, and schematic information for Line 306 from PG&E to SoCalGas; and
10. Whether the application requires an environmental review pursuant to CEQA.

4. Discussion and Analysis

We find that the proposed transaction is not adverse to the public interest pursuant to Public Utilities Code Section 851. SoCalGas intends to use Line 306 for "other productive purposes" as it will use Line 306 to serve customers using

Line 44-1088, rather than replace Line 44-1088, a project that is estimated to cost several times more than the purchase price for Line 306.²³ PG&E and SoCalGas will continue to use Line 306 to serve existing customers under the terms of the MEA. SoCalGas currently owns and operates pipelines; thus, it has demonstrated the technical expertise needed to operate Line 306. Accordingly, we grant PG&E's request to sell Line 306 to SoCalGas, subject to the conditions discussed below concerning its ratemaking proposal.

We find that PG&E's proposal to allocate 100 percent of the gain on the sale of Line 306's depreciable assets to ratepayers is just and reasonable. In R.04-09-003, which sets forth rules for allocating gains and losses on utility assets, the Commission found that "almost all of the financial risks are borne by the owners in the competitive market, but they are generally borne by ratepayers under utility regulation. Only the risk of the Commission's disallowance of a utility's asset purchase can be said to be borne by shareholders."²⁴ Accordingly, the Commission set forth a general rule for allocating gains from the sale of routine assets:²⁵ 100 percent of the gain or loss must be allocated to ratepayers for

²³ The replacement cost is estimated to be between \$153 million and \$246 million. See Attachment A, September 1, 2017 Pipeline Valuation Report at 137-138; Application, SoCalGas Letter at 1.

²⁴ Order Instituting Rulemaking on the Commission's Own Motion for the Purpose of Considering Policies and Guidelines Regarding the Allocation of Gains from Sales of Energy, Telecommunications, and Water Utility Assets, R.04-09-003; Opinion Regarding allocation of Gains on Sale of Utility Assets, D.06-05-041 at 17 (citing R.04-09-003), modified by, D.06-12-043 (revising allocation of gain on sale of non-depreciable assets).

²⁵ A routine asset sale is one that is does not involve an asset of extraordinary character, excludes sales of nuclear power plants, excludes disputes where a party alleges that the utility engaged in highly risky and non-utility-related ventures, and does not involve disputes over whether the utility grossly mismanaged the asset at issue. (See D.06-05-041 at 3.)

routine asset sales where the sales price is \$50 million or less and for after-tax gain or loss from the sale is \$10 million or less.²⁶

However, the Commission also held that “when a utility or other party believes asset values exceed the foregoing dollar thresholds . . . , the utility or other party may ask us to except the transaction from our general rule.”²⁷ Here, PG&E has not requested that the transaction should be excepted from the general rule. Line 306 is in PG&E’s rate base and, therefore, ratepayers have assumed the risk of financing Line 306.

With respect to the non-depreciable assets, we disagree with PG&E’s contention that the non-depreciable Line 306 assets are under the Federal Energy Regulatory Commission’s (FERC) jurisdiction and that, as a result, 100 percent of the gain on sale of such assets must be allocated to PG&E’s shareholders. PG&E has not demonstrated that the non-depreciable assets for Line 306 are under FERC’s, rather than the Commission’s, jurisdiction. While in R.04-09-003 the Commission determined that “[e]lectric utilities should allocate gains on sale of transmission property according to the FERC rules, rather than the rules we develop here,” this exemption does not apply to the transfer of gas utility assets located in California. Rather, the general rule for allocating gains or losses for utility sales of non-depreciable gas utility assets under the Commission’s jurisdiction is to assign 67 percent to ratepayers and 33 percent to shareholders.²⁸ Thus, we find that the gain on the sale of non-depreciable Line 306 assets shall be allocated consistent with the Commission’s general rule.

²⁶ *Id.* at Ordering Paragraph 5.

²⁷ *Id.* at Ordering Paragraph 7.

²⁸ D.06-12-043 at 9.

We find that PG&E's ratemaking proposal – to allocate the gain to ratepayers consistent with its Commission-approval cost allocation methodology for local transmission assets – is just and reasonable. However, as noted earlier, PG&E asserts that it reserves the right to amend or withdraw its filing by reason of its status as a debtor under chapter 11 of the Bankruptcy Code and by reason of events that may occur in its chapter 11 case. The Commission has conducted this proceeding on the assumption that PG&E will obtain whatever Bankruptcy Court approval for the transaction that may be required in its pending chapter 11 case. If, however, PG&E is not able to obtain the necessary approval to allow it to allocate the share of the gain on sale to ratepayers and use the ratemaking treatment authorized in the instant decision, PG&E must refile the instant application.

We also find that PG&E has demonstrated that it has adequate records of Line 306 pipeline specifications to transfer to SoCalGas. PG&E represents that it has transferred the Feature List and other pipeline specification data to SoCalGas. No party disputes that the records transfer is adequate. We also find that, because the sale of Line 306 will not result in a direct or indirect physical change in the environment, no CEQA review is required at this time.

Lastly, Section 854.2 defines “change of control” events and statutory requirements that are triggered when a “change of control” event occurs. Section 854.2(b)(1)(A) defines “change of control” as an “event that triggers the application of Section 851 or 854.” PG&E requests approval in this application under Section 851, which would typically trigger the “change of control provisions” of Section 854.2. Section 853(b) states “[t]he commission may...exempt any public utility...from this article if it finds that the application thereof with respect to the public utility...is not necessary in the public interest.”

Accordingly, the Commission exempts this application from the change of control requirements contained in Section 854.2.

5. Request to File Documents Under Seal

Prior to the PHC, PG&E and SoCalGas responded to Cal Advocates' data requests. In the responses, PG&E and SoCalGas identified certain information as confidential, such as proprietary vendor information, critical infrastructure, and personnel information.²⁹ As discussed earlier, on July 15, 2019, consistent with the discussion at the PHC, the parties filed a joint motion to enter PG&E's and SoCalGas' data responses (Attachment A) into the record. In the joint motion, the parties request that the Commission designate the data responses as confidential and protect the material under seal. For good cause shown, we grant the parties' request.

6. Comments on Proposed Decision

The proposed decision of ALJ Powell in this matter was mailed to parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On March 12, 2020, PG&E filed comments supporting the Proposed Decision. No party filed reply comments.

7. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Christine A. Powell is the assigned ALJ in this proceeding.

²⁹ Confidential Data Motion at 1-2 (citing Government Code Sections 6254(c), 6254(ab), 6254(k), 6255; U.S.C. §§ 131(3), 133(a)(1)(E); 6 CFR §§ 29.2(b), 29.8; 18 CFR § 388.113(c); FERC Orders 630, 643, 649, 662, 683, and 702; 68 Fed. Reg. 9862; 18 C.F.R. §§ 157.14(a)(8-10), 157.18(c); 260.8; 49 CFR §§ 1520.5, 1520.9; *Chowdhury v. Nw. Airlines Corp.*, 226 F.R.D. 608 (N.D. Cal. 2004); PHMSA Guidelines, Federal Register Vol. 81, No. 120, June 22, 2016, at 40764; 2011 WL 660568 (2011), Civ. Code §§ 1798.80 *et seq.*; Pub. Util. Code § 8380(d); D.11-0 debtor under chapter 11 of the Bankruptcy Code 7-056; D.12-08-045; D.17-06-015).

Findings of Fact

1. PG&E is a debtor under chapter 11 of the Bankruptcy Code.
2. The sale price negotiated in the Purchase and Sales Agreement is \$25 million. The transfer will include various real property interests, including rights-of-way and easements.
3. The net book value of depreciable Line 306 assets is \$3.845 million.
4. The after-tax gain on sale of the Line 306 depreciable assets is approximately \$15 million.
5. The after-tax gain on sale of the Line 306 non-depreciable assets is \$2,384.
6. PG&E has not requested an exception from the Commission's general rule governing the allocation of the gain on sale of utility assets.
7. PG&E proposes to use its Commission-approved cost allocation methodology to allocate the ratepayer share of the gain on sale to core and non-core local transmission customers.
8. Line 306 is an intrastate gas pipeline that is under the Commission's jurisdiction.
9. PG&E transferred the Feature List and other pipeline specification and testing data for Line 306 to SoCalGas.
10. SoCalGas intends to use Line 306 in lieu of rebuilding its Line 44-1088. Rebuilding Line 44-1088 would cost ratepayers at least \$153 million.
11. SoCalGas has the technical capabilities to operate and maintain Line 306.
12. Following the transfer, SoCalGas intends to serve existing customers of Line 306.
13. The sale will not cause direct or indirect physical change in the environment.
14. The proposed transfer is unopposed.

Conclusions of Law

1. The proposed sale of Line 306 by Pacific Gas and Electric company to Southern California Gas Company is not adverse to the public interest pursuant to Public Utilities code Section 851.
2. The entire gain on sale of the depreciable assets of Line 306 should be allocated to PG&E's ratepayers.
3. For the gain on sale of the non-depreciable assets of Line 306, 67 percent should be allocated to PG&E's ratepayers and 33 percent should be allocated to PG&E's shareholders.
4. The sale of Line 306 should be approved, provided that PG&E is able to implement the ratemaking treatment authorized in this decision.
5. PG&E should be required to refile its application for approval to the sell Line 306 if the Bankruptcy Court does not approve the adopted ratemaking treatment.
6. The joint motion to file Attachment A under seal should be granted in accordance with Ordering Paragraph 6 of this decision.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company (PG&E) for approval to sell gas local transmission Line 306 to Southern California Gas Company is approved, provided that PG&E is able to implement the ratemaking treatment authorized in this decision. PG&E shall refile its application for approval to the sell Line 306 if the Bankruptcy Court does not approve the adopted ratemaking treatment.
2. Pacific Gas and Electric Company must submit the final calculation for the gain on sale of the depreciable and non-depreciable assets of Line 306 to the

Commission in a Tier 1 Advice letter within 45 days after the close of the sale transaction.

3. Within 30 days of completing the sale transaction of Line 306, Pacific Gas and Electric Company must file a Tier 1 Advice Letter to submit tariff language that implements the ratemaking treatment authorized in this decision.

4. Pacific Gas and Electric Company's exhibit PG&E-1 is admitted.

5. The joint motion, dated July 15, 2019, to file under seal the information designated as confidential material in Attachment A is granted subject to the conditions in Ordering Paragraph 6.

6. The designated confidential materials referenced in Ordering Paragraph 5 above, shall remain under seal for three years after the date of this order. During this three-year period, the confidential materials shall remain under seal and not be accessible or disclosed to persons other than the Commissioners and Commission staff except on further order or ruling of the Commission, the assigned Administrative Law Judge, or the designated Law and Motion Judge at the time of such ruling. If any interested party believes it is necessary for any of this information to remain under seal longer than three years, that party shall file a new motion stating the justification of further withholding the information from public inspection. The motion shall be filed at least 30 days before expiration of the instant order.

7. Application 19-04-003 is closed.

This order is effective today.

Dated March 26, 2020 at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners